

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ALBERT L. GRAY, Administrator of
the Estate of DEREK GRAY, et al.,

Plaintiffs,

v.

JEFFREY DERDERIAN, et al.,

Defendants.

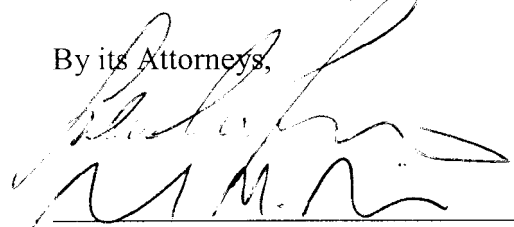
C.A. No. 04-312L

**HOME DEPOT U.S.A., INC.'S MOTION TO
QUASH OR MODIFY PLAINTIFFS' SUBPOENAS**

Home Depot U.S.A., Inc. ("Home Depot"), a third-party recipient of subpoenas in the above-captioned matter, hereby moves this Court to quash or modify the subpoenas pursuant to Rule 45 of the Federal Rules of Civil Procedure. In support hereof, Home Depot relies on the accompanying Memorandum of Law in Support of its Motion to Quash or Modify the Subpoenas, as well as the Affidavit of Mary Givens.

HOME DEPOT U.S.A., INC:

By its Attorneys,



Stephen M. Prignano (#3649)
Raymond P. Ripple (#6489)
EDWARDS & ANGELL, LLP
2800 Financial Plaza
Providence, RI 02903
(401) 274-9200
(401) 276-6611 (fax)

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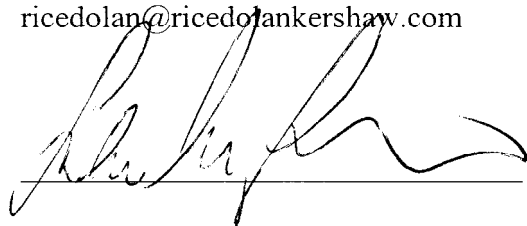
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 29th day of April, 2005, I caused a true copy of the within Motion to be served by electronic mail to the following counsel of record:

Brian R. Cunha, Esq.	Brian@Briancunha.com
Joseph V. Cavanagh, Jr., Esq.	stationfire@blishcavlaw.com
Ronald Langlois, Esq.	rlanglois@smithbrink.com
Edward M. Crane, Esq.	ecrane@skadden.com
Anthony F. DeMarco, Esq.	tdemarco@conversent.net
Curtis R. Diedrich, Esq.	Cdiedrich@sloanewalsh.com
Edward T. Hinchey, Esq.	EHinchey@sloanewalsh.com
Randall L. Souza, Esq.	StationFireLitigation@nixonpeabody.com
Fred A. Kelly, Jr., Esq.	StationFireLitigation@nixonpeabody.com
Ian C. Ridlon, Esq.	StationFireLitigation@nixonpeabody.com
James T. Murphy, Esq.	jtm@hansoncurran.com
Thomas C. Angelone, Esq.	Angelonelaw@aol.com
Stephen E. Breggia, Esq.	sbreggia@BBGlaw.us
Scott J. Tucker, Esq.	STucker@ths-law.com
Ronald J. Resmini, Esq.	Resminilaw@yahoo.com
Donald J. Maroney, Esq.	dmaroney@kkrs.com
Robert I. Reardon, Jr., Esq.	Reardonlaw@aol.com
Robert T. Rimmer, Esq.	Reardonlaw@aol.com
Ralph J. Monaco, Esq.	rmonaco.c-l@snet.net
James R. Lee, Esq.	jlee@riag.state.ri.us

James A. Ruggieri, Esq.	JRuggieri@hcc-law.com
Edwin F. McPherson, Esq.	emcpherson@m-klaw.com
Susan S. Wettle, Esq.	swettle@fbtlaw.com
Howard A. Merten, Esq.	hmerten.station@vetterandwhite.com
Stephanie DiMaio Larivee, Esq.	singinglawyer@msn.com
Mark C. Hadden, Esq.	MHadden@mhaddenlaw.com
Bruce P. Keller, Esq.	bpkeller@debevoise.com
Michael Potenza, Esq.	mpotenza@debevoise.com
Steven A. Minicucci, Esq.	SMinicucci@calvinolaw.com
Mark S. Mandell, Esq.	msmandell@msn.com
Matthew F. Medeiros, Esq.	mfm@lmkbw.com
Charles N. Redihan, Jr., Esq.	credihan@KPRlaw.com
Eva Marie Mancuso, Esq.	Emancuso@hwac.com
Michael A. St. Pierre, Esq.	mikesp@rrsplaw.com
Faith A. LaSalle, Esq.	flasalle@lasallelaw.com
Donna M. Lamontagne, Esq.	Dlamontagne@zizikpowers.com
Mark K. Ostrowski, Esq.	mostrowski@goodwin.com
Jessica Deanseris, Esq.	jdean@wistbar.com
Patrick T. Jones, Esq.	pjones@cmj-law.com
Marc DeSisto, Esq.	marc@Desistolaw.com
Mark P. Dolan, Esq.	Ricedolank@aol.com
Richard W. MacAdams, Esq.	Rmacadams@mandwlaw.com
Mark T. Nugent, Esq.	mnugent@morrisonmahoney.com

Thomas W. Lyons, Esq.	tlyons@straussfactor.com
C. Russell Bengtson, Esq.	RBengtson@ckmlaw.com
John R. Mahoney, Esq.	johnmahoney@amlawllp.com
Christopher C. Fallon, Jr., Esq.	cfallon@cozen.com
Mark D. Cahill, Esq.	mcahill@choate.com
Charles L. Babcock, Esq.	cbabcock@jw.com
Earl H. Walker, Esq.	ewalker@jw.com
Georgia A. Sullivan, Esq.	Georgia.Sullivan@thehartford.com
Ann M. Songer, Esq.	asonger@shb.com
George E. Wolf, III, Esq.	gwolf@shb.com
James J. Restivo, Jr., Esq.	jrestivo@reedsmith.com
W. Thomas McGough, Jr., Esq.	tmcgough@reedsmith.com
Andrew J. Trevelise, Esq.	atrevelise@reedsmith.com
Mr. Howard J. Julian	sohohomes@yahoo.com
Ralph J. Monaco, Esq.	Rmonaco.c-l@snet.net
Gregory L. Boyer, Esq.	boyerlaw1@aol.com
Stephen P. Fogerty, Esq.	fogerty@halloran-sage.com
Stephen A. Izzi, Esq.	Stephen.Izzi@hklaw.com
Anthony R. Leone, Esq.	ricedolan@ricedolanckershaw.com



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ALBERT L. GRAY, Administrator of
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Plaintiffs,

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C.A. No. 04-312L

**MEMORANDUM OF LAW IN SUPPORT OF HOME DEPOT U.S.A., INC.'S
MOTION TO QUASH OR MODIFY PLAINTIFFS' SUBPOENAS**

On March 23, 2005, Plaintiffs in the above-captioned litigation served Home Depot U.S.A., Inc. ("Home Depot") with two subpoenas (the "Subpoenas") seeking various records of credit card purchases of Howard Julian ("Julian") and Michael and Jeffrey Derderian (the "Derderians"), defendants in the above-captioned litigation. As explained below, the Subpoenas should be quashed or modified because responding to them would subject Home Depot to an undue burden as set forth in Rule 45(c)(3)(A)(iv) of the Federal Rules of Civil Procedure.

Facts

Home Depot is not a party to this litigation.¹ On December 15, 2004, the Rhode Island Attorney General's Office served Home Depot with a subpoena seeking the production of records of various credit card purchases of the Derderians relating to criminal cases pending against them in Rhode Island state court. The Attorney General's subpoena requested records for the limited time frame of April 1, 2000 to June 30, 2000,

¹ On August 31, 2004, Julian brought a third-party complaint against Home Depot for indemnification. However, on October 13, 2004, Julian filed a motion to dismiss the action, and this Court granted Julian's motion in an order issued on December 13, 2004.

and supplied Home Depot descriptive information relating to the credit card purchases such as credit card numbers, transaction dates, the amounts of the purchases, and product reference numbers. As a result of these details, on December 16, 2004, Home Depot was able to comply fully with the Attorney General's subpoena.

On February 24, 2005, the Plaintiffs served Home Depot with a subpoena seeking the exact same information sought in the Attorney General's subpoena of December 15, 2004. Due to the identical nature of the Plaintiffs' subpoena to that of the Attorney General, Home Depot was able to respond to the subpoena in a timely fashion by producing responsive documents to the Plaintiffs on March 14, 2005. However, following compliance with the Plaintiffs' subpoena, counsel for the Plaintiffs contacted Home Depot's counsel indicating that, due to a clerical error regarding the scope of the subpoena, Plaintiffs needed to issue a modified subpoena that would extend the scope of the subpoena by three (3) months. Counsel for Home Depot agreed to accept service of a modified subpoena under these circumstances. However, on March 24, 2005, when Home Depot received the modified subpoena, the scope of the subpoena was enlarged to cover a period from January 1, 2000 to February 20, 2003 – a time period three (3) years longer than that originally indicated by Plaintiffs' counsel. (A copy of the Derderian subpoena is attached hereto as Exhibit A). Additionally, unlike the previous subpoena, the modified subpoena also did not include detailed information describing the records of credit card purchases sought for the two additional time periods of January 1, 2000 to April 10, 2000 and June 30, 2000 to February 20, 2003.

On March 23, 2005, in addition to the modified subpoena seeking information from Home Depot relating to the Derderians, Plaintiffs' counsel also served upon Home Depot a

second subpoena seeking similar information with respect to Julian. This subpoena seeks production of the following types of records:

Any and all records, for the period of January 1, 1996 through March 31, 2000 of credit card purchases or returns under the card numbers listed below, including but not limited to:

all details (sku numbers and detailed product descriptions, including manufacturer and model, where available) of items purchased and returned with Discover credit card number 6011 0010 2352 4517 issued by Discover to Howard Julian and number 4060 9500 9115 6484 issued by Navy Federal Credit Union (Visa card) to Howard Julian.

(A copy of the Julian subpoena is attached hereto as Exhibit B). This subpoena does not, however, provide specific information regarding the items purchased by Julian such as the dates of the purchases, the amounts of the purchases, or the product reference numbers. In fact, the subpoena does not indicate if Julian even purchased products from Home Depot during the time period set forth in the subpoena.

On March 25, 2005, counsel for Home Depot sent a letter to Plaintiffs' counsel in an attempt to have the time frame of the Subpoenas restricted and to obtain more specific information regarding the Derderians' and Julian's purchases. In response to this letter, Plaintiffs' counsel indicated that they were willing initially to restrict the search for records to Home Depot's Warwick, Rhode Island store, but that they were unable to provide more specific information regarding the purchases. Home Depot then filed the instant motion to quash or modify the Subpoenas.²

² Although the original return date for the Subpoenas was April 11, 2005, Plaintiffs' counsel agreed to extend Home Depot's time to respond to the Subpoenas until May 2, 2005. In lieu of having Plaintiffs' counsel amend the Subpoenas to reflect this new date, counsel for Home Depot confirmed the extension in a letter sent to Plaintiffs' counsel by electronic and regular mail on April 14, 2005.

Argument

Rule 45 of the Federal Rules of Civil Procedure provides, in pertinent part, that "[o]n timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it . . . subjects a person to undue burden." Fed. R. Civ. P. 45(c)(3)(A)(iv); see Heidelberg Americas, Inc. v. Tokyo Seisakusho, Ltd., 333 F.3d 38, 41 (1st Cir. 2003). The rule does not specify what constitutes an "undue burden," but instead leaves such determinations to the sound discretion of the court. See, e.g., Naartex Consulting Corp. v. Watt, 722 F.2d 779, 788 (D.C. Cir. 1983); Semtek Int'l, Inc. v. Mercuriy Ltd., C.A. No. 96-3607, 1996 WL 238538, *3 (N.D.N.Y. May 1, 1996). "Among the factors that the court may consider in determining whether there is an undue burden are 'relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed.'" Williams v. City of Dallas, 178 F.R.D. 103, 109 (N.D. Tex. 1998) (quoting Concord Boat Corp. v. Brunswick Corp., 169 F.R.D. 44, 49 (S.D.N.Y. 1996)); see Northwestern Memorial Hosp. v. Ashcroft, 362 F.3d 923, 927 (7th Cir. 2004) (Posner, J.) (holding that, in determining whether compliance with a subpoena would be "undue," a court may balance the burden of compliance with the subpoena versus the benefit of production of the material sought by it); Semtek, 1996 WL 238538 at *3. Several courts also have held that nonparties served with subpoenas are entitled to consideration regarding expense and inconvenience associated with responding to the subpoena. See British Int'l Ins. Co. v. Seguros La Republica, S.A., 200 F.R.D. 586, 591 (W.D. Tex. 2000); Williams, 178 F.R.D. at 109.

Home Depot would suffer an "undue burden" if it were forced to comply with the Subpoenas under the present circumstances because it has not been provided with sufficient information to enable it to search its records in a cost effective and timely manner. See Givens Aff. at ¶¶ 8-9 (A copy of which is attached hereto as Exhibit C). Home Depot has two methods by which it can search electronically for the requested records: (1) a credit inquiry search; and (2) a search on its Electronic Journal database. However, neither of these methods is useful with respect to conducting searches for records that may comply with the Subpoenas. Under the credit inquiry method, Home Depot can only search for records created within the past eighteen (18) months. See id. at ¶ 7. Because the temporal scope of the Subpoenas extends no later February 20, 2003, a credit inquiry search would not locate any responsive documents.

With respect to the Electronic Journal database, Home Depot cannot conduct a search in an efficient manner using only a credit card number. See id. at ¶ 8. In order to locate records of a specific purchase using the Electronic Journal database, Home Depot needs the following information: (1) a transaction date; (2) the Home Depot store number; (3) the monetary amount of the purchase; and (4) the credit card number. See id. An Electronic Journal search using only a credit card number (and possibly the store number of the Warwick, Rhode Island store), would require an employee of Home Depot to search through an entry for every date that falls within the scope of the Subpoenas to determine if a purchase was made on that day using one of the credit card numbers. See id. at ¶ 9. In total, this would amount to a manual search of over 2,500 entries. See id. This effort would take countless hours of work to search for records that may not even exist.

Additionally, even if Home Depot had the requisite data to conduct a search using its Electronic Journal database, it would still be unable to search for all of the records sought in the Julian subpoena. Electronic Journal only has a retention period of seven (7) years, which prevents Home Depot from being able to search electronically farther back in time than April 1998. See id. at ¶ 11. This limitation leaves approximately a year and-a-half of time included in the scope of Julian's subpoena that would require Home Depot to conduct a manual search of paper records in order to determine if there are responsive documents. It would be unreasonable and oppressive to conduct a search in this manner because Home Depot's paper records, to the extent they even exist, are not well organized and would take an enormous amount of time to locate and review. See id.

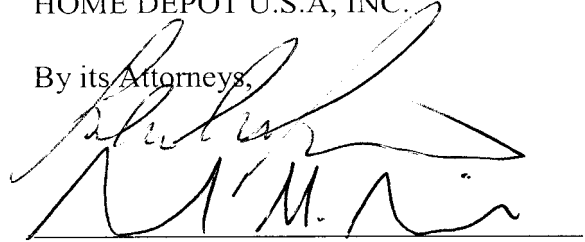
Furthermore, the Plaintiffs' need for these documents is reduced by the fact that (at least as to whether Julian made purchases during the time frame of the Subpoenas) is more than likely available through less burdensome alternatives, *i.e.*, through discovery propounded directly to Julian or the Derderians, or through a subpoena served on the credit cards companies. See Perez v. City of Chicago, C.A. No. 02-1969, 2004 WL 1151570, *4 (N.D. Ill. Apr. 29, 2004) (holding that a party's need for documents from a non-party was reduced when the information was available through less burdensome means). In fact, the Plaintiffs have already subpoenaed Julian's credit card records directly from Navy Federal Credit Union and Discover Card that will not only show whether Julian made any purchases at Home Depot during the relevant time period, but also the transaction date, location, and monetary amount of purchases that may exist. Therefore, Home Depot submits that this Court should quash the Plaintiffs' Subpoenas.

Conclusion

For all the foregoing reasons, Home Depot respectfully requests that this Court quash or modify the Subpoenas pursuant to Rule 45(c)(3)(A)(iv) of the Federal Rules of Civil Procedure.

HOME DEPOT U.S.A, INC.

By its Attorneys,

Two handwritten signatures in black ink. The first signature is larger and more stylized, while the second is smaller and more legible.

Stephen M. Prignano (#3649)

Raymond P. Ripple (#6489)

EDWARDS & ANGELL, LLP

2800 Financial Plaza

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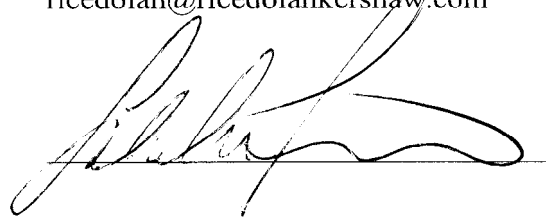
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I, the undersigned, hereby certify that on the 29th day of April, 2005, I caused a true copy of the within Memorandum of Law to be served by electronic mail to the following counsel of record:

Brian R. Cunha, Esq.	Brian@Briancunha.com
Joseph V. Cavanagh, Jr., Esq.	stationfire@blishcavlaw.com
Ronald Langlois, Esq.	rlanglois@smithbrink.com
Edward M. Crane, Esq.	ecrane@skadden.com
Anthony F. DeMarco, Esq.	tdemarco@conversent.net
Curtis R. Diedrich, Esq.	Cdiedrich@sloanewalsh.com
Edward T. Hinchey, Esq.	EHinchey@sloanewalsh.com
Randall L. Souza, Esq.	StationFireLitigation@nixonpeabody.com
Fred A. Kelly, Jr., Esq.	StationFireLitigation@nixonpeabody.com
Ian C. Ridlon, Esq.	StationFireLitigation@nixonpeabody.com
James T. Murphy, Esq.	jtm@hansoncurran.com
Thomas C. Angelone, Esq.	Angelonelaw@aol.com
Stephen E. Breggia, Esq.	sbreggia@BBGlaw.us
Scott J. Tucker, Esq.	STucker@ths-law.com
Ronald J. Resmini, Esq.	Resminilaw@yahoo.com
Donald J. Maroney, Esq.	dmaroney@kkrs.com
Robert I. Reardon, Jr., Esq.	Reardonlaw@aol.com
Robert T. Rimmer, Esq.	Reardonlaw@aol.com
Ralph J. Monaco, Esq.	rmonaco.c-l@snet.net
James R. Lee, Esq.	jlee@riag.state.ri.us

James A. Ruggieri, Esq.	JRuggieri@hcc-law.com
Edwin F. McPherson, Esq.	emcpherson@m-klaw.com
Susan S. Wettle, Esq.	swettle@fbtlaw.com
Howard A. Merten, Esq.	hmerten.station@vetterandwhite.com
Stephanie DiMaio Larivec, Esq.	singlawyer@msn.com
Mark C. Hadden, Esq.	MHadden@mhaddenlaw.com
Bruce P. Keller, Esq.	bpkeller@debevoise.com
Michael Potenza, Esq.	mpotenza@debevoise.com
Steven A. Minicucci, Esq.	SMinicucci@calvinolaw.com
Mark S. Mandell, Esq.	msmandell@msn.com
Matthew F. Medeiros, Esq.	mfm@lmkbw.com
Charles N. Redihan, Jr., Esq.	credihan@KPRlaw.com
Eva Marie Mancuso, Esq.	Emancuso@hwac.com
Michael A. St. Pierre, Esq.	mikesp@rrsplaw.com
Faith A. LaSalle, Esq.	flasalle@lasallelaw.com
Donna M. Lamontagne, Esq.	Dlamontagne@zizikpowers.com
Mark K. Ostrowski, Esq.	mostrowski@goodwin.com
Jessica Deanseris, Esq.	jdean@wistbar.com
Patrick T. Jones, Esq.	pjones@cmj-law.com
Marc DeSisto, Esq.	marc@Desistolaw.com
Mark P. Dolan, Esq.	Ricedolank@aol.com
Richard W. MacAdams, Esq.	Rmacadams@mandwlaw.com
Mark T. Nugent, Esq.	mnugent@morrissonmahoney.com

Thomas W. Lyons, Esq.	tlyons@straussfactor.com
C. Russell Bengtson, Esq.	RBengtson@ckmlaw.com
John R. Mahoney, Esq.	johnmahoney@amlawllp.com
Christopher C. Fallon, Jr., Esq.	cfallon@cozen.com
Mark D. Cahill, Esq.	mcahill@choate.com
Charles L. Babcock, Esq.	cbabcock@jw.com
Earl H. Walker, Esq.	ewalker@jw.com
Georgia A. Sullivan, Esq.	Georgia.Sullivan@thehartford.com
Ann M. Songer, Esq.	asonger@shb.com
George E. Wolf, III, Esq.	gwolf@shb.com
James J. Restivo, Jr., Esq.	jrestivo@reedsmith.com
W. Thomas McGough, Jr., Esq.	tmcgough@reedsmith.com
Andrew J. Trevelise, Esq.	atrevelise@reedsmith.com
Mr. Howard J. Julian	sohohomes@yahoo.com
Ralph J. Monaco, Esq.	Rmonaco.c-l@snet.net
Gregory L. Boyer, Esq.	boyerlaw1@aol.com
Stephen P. Fogerty, Esq.	fogerty@halloran-sage.com
Stephen A. Izzi, Esq.	Stephen.Izzi@hklaw.com
Anthony R. Leone, Esq.	ricedolan@ricedolankershaw.com



United States District Court

FOR THE DISTRICT OF RHODE ISLAND

Albert L. Gray, Administrator, et al.

v.

Jeffrey Denderian, et al.

SUBPOENA IN A CIVIL CASE

CASE NUMBER: 04-312L

TO: Keeper of Records, Home Depot USA, Inc., 80 Universal Boulevard, Warwick, Rhode Island 02886 c/o its attorney, Stephen Prignano, Esq., Edwards & Angell, 2800 Financial Plaza, Providence, Rhode Island 02903

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

Wistow & Barylick Incorporated
61 Weybosset Street, Providence, RI 02903

April 11, 2005 at 10:30 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): See attached Exhibit A

PLACE

DATE AND TIME

Wistow & Barylick Incorporated
61 Weybosset Street, Providence, RI 02903

April 11, 2005 at 10:30 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

John P. Barylick, Attorney for Plaintiff

3/23/05

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

John P. Barylick, Esq., Wistow & Barylick, Incorporated, 61 Weybosset Street, Providence, RI 02903 (See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

401-831-2700

PROOF OF SERVICE

SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in per-

son, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Exhibit A

Any and all records, for the period 1/1/2000 to 2/20/2003 of credit card purchases or returns under the card numbers listed below, including but not limited to:

all details (sku numbers and product descriptions including manufacturer and model number) of items purchased and returned with credit card numbers 4246 3112 8907 7619 and 4246 3112 8907 7627 issued by Bank One (First USA Bank, NA) to Michael A. Derderian and Jeffrey A. Derderian, respectively, inclusive of

Card Number 4246 3112 8907 7619

<u>Transaction Date</u>	<u>Amount</u>	<u>Reference #</u>
4/11/2000	8.07	2461043FP09FBEXK0
4/15/2000	18.10	2461043FV09FFS3FT
4/17/2000	49.92	2461043FX09FQ0ME0
4/18/2000	310.94	2461043FY09FBWA2H
4/18/2000	14.92	2461043FY09FBWBBS
4/18/2000	(38.26)	7461043FY09FBWDH1 credit
4/20/2000	19.54	2461043G009FQ4GY5
4/20/2000	(120.25)	7461043G009FQ4TEA credit
4/27/2000	10.33	2461043G709FQ75ZN
5/5/2000	12.54	2461043GG09FQX9AG
5/16/2000	54.81	2461043GS09FQFSE6
5/31/2000	9.59	2461043H909FQJFLS

Card Number 4246 3112 8907 7627

<u>Transaction Date</u>	<u>Amount</u>	<u>Reference #</u>
4/16/2000	69.79	2461043FW09FF55L8

United States District Court

FOR THE DISTRICT OF RHODE ISLAND

Albert L. Gray, Administrator, et al.

V.

Jeffrey Derderian, et al.

SUBPOENA IN A CIVIL CASE

CASE NUMBER: 04-312L

TO: Keeper of Records, Home Depot, USA, Inc., c/o Stephen Prignano, Esq.,
Edwards & Angell, 2800 Financial Plaza, Providence, Rhode Island 02903☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Wistow & Baryllick Incorporated
61 Weybosset Street, Providence, RI 02903

DATE AND TIME

April 18, 2005 at 10:00 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): See attached Exhibit A

PLACE

Wistow & Baryllick Incorporated
61 Weybosset Street, Providence, RI 02903

DATE AND TIME

April 18, 2005 at 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b) (6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

John P. Baryllick, Attorney for Plaintiff

3/23/05

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

John P. Baryllick, Wistow & Baryllick Incorporated, 61 Weybosset St., Providence R.I. 02903

401-831-2760

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

PROOF OF SERVICE

SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in per-

son, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT A

Any and all records, for the period January 1, 1996 through March 31, 2000 of credit card purchases or returns under the card numbers listed below, including but not limited to:

all details (sku numbers and detailed product descriptions, including manufacturer and model, where available) of items purchased and returned with Discover credit card number 6011 0010 2352 4517 issued by Discover to Howard Julian and number 4060 9500 9115 6484 issued by Navy Federal Credit Union (Visa card) to Howard Julian.

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ALBERT L. GRAY, Administrator, et al.)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 04-312L
)	
JEFFREY DERDERIAN, et al.)	
)	
Defendants.)	

AFFIDAVIT OF MARY GIVENS

I, Mary Givens, being duly sworn, do depose and state as follows:

1. I am a litigation paralegal employed by Home Depot USA, Inc. ("Home Depot") in Atlanta, Georgia. In my role, it is part of my duties to coordinate the responses to subpoenas including the gathering of responsive documents and records. I have personal knowledge of the facts attested to in this Affidavit.

2. On March 23, 2005, Home Depot was served with a subpoena seeking the following information:

Any and all records, for the period January 1, 1996 through March 31, 2000 of credit card purchases or returns under the credit card numbers listed below, including but not limited to:

All details (sku numbers and detailed product descriptions, including manufacturer and model, where available) of items purchased and returned with Discover credit card number 6011 0010 2352 4517 issued by Discover to Howard Julian and number 4060 9500 9115 6484 issued by Navy Federal Credit Union (Visa card) to Howard Julian.

3. On March 23, 2005, Home Depot was served with a second subpoena seeking the following information:

Any and all records, for the period 1/1/2000 to 2/20/2003 of credit card purchases or returns under the credit card numbers listed below, including but not limited to:

All details (sku numbers and detailed product descriptions, including manufacturer and model, where available) of items purchased and returned with credit card numbers 4246 3112 8907 7619 and 4246 3112 8907 7627 issued by

Bank One (First USA Bank, NA) to Michael A. Derderian and Jeffrey A. Derderian

This subpoena also provided an itemized listing of thirteen (13) credit card transactions that were within the scope of the subpoena, including transaction date, and the amount of the purchase. Records relating to these thirteen (13) transactions have already been produced to the Plaintiffs.

4. The only information provided by the Plaintiffs to assist Home Depot in the search for these records is the individuals' credit card numbers.

5. Upon receiving these subpoenas, I coordinated with Home Depot's Information Systems and Accounting Department associates in an attempt to determine Home Depot's ability to search for records of credit card transactions in its stores.

6. I learned that Home Depot has two methods that provide it with the capability to electronically search for records of credit card purchases: (1) a credit history inquiry, and (2) a search on a database known as "Electronic Journal."

7. A credit history inquiry can be performed using only a credit card number. However, this database only has a retention period of eighteen (18) months. As a result, this database would not allow Home Depot to locate any records within the time frame requested by the subpoenas.

8. Electronic Journal has a retention period of seven (7) years, but is not designed to be searched by credit card number alone. Electronic Journal requires the following information in order to locate records of specific purchases in the database: (1) a transaction date; (2) a Home Depot store number; (3) the monetary amount of the purchase; and (4) the credit card number. However, the subpoenas issued by the Plaintiff only provide a credit card number, which will make it extremely difficult and time consuming to search for the subpoenaed records.


9. Since Electronic Journal is not designed to locate records of credit card purchases with a credit card number alone, a search with only a credit card number would require an

individual to manually search each individual date within the scope of the subpoena (in this case as many as 2,555 days) in order to locate records of credit card purchases.

10. A search in such a manner would be extremely time consuming and require countless hours of searching due to the number of days and credit card numbers that fall within the scope of the subpoena. Additionally, Home Depot would have to hire a temporary worker to perform these searches due to the amount of time it would take a current employee to perform them.

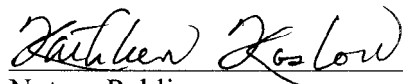
11. Even if Home Depot did have adequate information to perform an Electronic Journal search for records that may be responsive to the subpoenas, there would still be a one-and-a-half year period in the scope of Julian's subpoena that could not be searched electronically because of Electronic Journal's seven (7) year retention period. This would require a manual search of paper records relating to the remaining year-and-a-half. However, such records, to the extent they even exist, are not well organized and would require an enormous amount of time to locate and sift through.

Dated: April 28, 2005


Mary Givens

STATE OF GEORGIA
COUNTY OF Cobb

Subscribed and sworn to, before me, this 28 day of April, 2005.


Notary Public
My ~~Commission Expires:~~
COMMISSION EXPIRES DEC. 27, 2005